

**U. S. DEPARTMENT OF AGRICULTURE**  
**Commodity Credit Corporation**

ELS Agreement No. (to be assigned by CCC): \_\_\_\_\_

**EXTRA LONG STAPLE COTTON DOMESTIC USER/EXPORTER AGREEMENT**

This ELS Agreement, made and entered into by and between Commodity Credit Corporation, a corporate agency of the United States ( "CCC"), and

<b>NAME:</b>	
<b>MAILING ADDRESS:</b>	<b>PAYEE ADDRESS (PAYMENT):</b>
<b>STREET ADDRESS, CITY, STATE, OF RECORD KEEPING OFFICE:</b>	
<b>TAXPAYER ID NO. AND TYPE (NOTE IF SOCIAL SECURITY NO.)</b>	
<b>NAME OF CONTACT PERSON:</b>	<b>TELEPHONE NO.:</b>
	<b>FAX NO.:</b>
	<b>E-MAIL:</b>
<b>DOMESTIC USER LOCATIONS/EXPORTER MULTIPLE TRADE NAMES:</b>	

**CHECK ONE BOX:**

**DOMESTIC USER**

☐

**EXPORTER**

☐

("Domestic User or Exporter", as applicable) is for the purpose of authorizing the Domestic User or Exporter to participate in the Special Competitive Provisions for Extra Long Staple Cotton as authorized by the Federal Agriculture Improvement and Reform Act of 1996, as amended.

**Continued on next page**

**SECTION A. GENERAL****Section A-1. General Provisions**

- (a) Beginning with the effective date of this Extra Long Staple (ELS) Agreement, CCC will, in accordance with the terms and conditions of this ELS Agreement and regulations promulgated by CCC, make payments in the form of certificates or cash, as designated by the Domestic User or Exporter named above. Such payments will be made for eligible cotton consumed by the Domestic User or shipped for export by the Exporter in a week following a consecutive 4-week period in which the lowest adjusted Wednesday through Tuesday average price quotation for foreign growths (LFQ), as quoted for ELS cotton, delivered C.I.F. (Cost, insurance and freight) Northern Europe is less than the Wednesday through Tuesday adjusted average domestic spot price quotation for U.S. ELS cotton, grade 3, staple 44, micronaire 3.5 or higher, uncompressed, F.O.B. warehouse, and the LFQ, as determined by CCC, is less than 134 percent of the current crop year loan rate for ELS cotton.
- (b) No payments in excess of those allowed by law will be issued by CCC.

**Section A-2. Eligible and Ineligible Cotton**

- (a) For the purposes of this ELS Agreement, eligible cotton shall be domestically produced baled ELS cotton which must be one of the following:
  - (1) baled lint, including baled lint classified by USDA's Agricultural Marketing Service;
  - (2) samples removed from ELS cotton bales for classification purposes which have been rebaled ("loose").
- (b) For the purposes of this ELS Agreement, the following types of cotton are not eligible:
  - (1) lint cleaner waste resulting from the ginning process;
  - (2) lint produced from the cottonseed crushing process ("linters");
  - (3) imported cotton;
  - (4) textile mill wastes;
  - (5) semi-processed, or reginned motes including those which have been blended with textile mill waste or other fibers;
  - (6) lint classified as Below Grade by the Agricultural Marketing Service; or
  - (7) upland cotton.

**Section A-3. Completion and Execution of the ELS Agreement**

To be eligible for payment, Domestic Users and Exporters must complete this ELS Agreement. An ELS

Agreement must be completed for each Taxpayer ID. Submit the original signed ELS Agreement and one completed copy to KCCO (Exhibit 1). KCCO will return a copy of the approved ELS Agreement to the Domestic User or Exporter.

#### **Section A-4. Payment Rate**

- (a) Such payments made during the period beginning October 1, 1999, and ending July 31, 2003 will be made for eligible cotton consumed by the Domestic User or shipped for export by the Exporter in a week following a consecutive 4-week period in accordance with 7CFR Part 1427.1207. Current price quotes as determined by CCC will be used when possible.
- (b) The payment rate for loose cotton will be at 100 percent of the applicable payment rate. Eligible loose cotton must be 100 percent ELS.
- (c) The payment rate for eligible ELS cotton will be announced by CCC each Tuesday afternoon and shall apply to all bales consumed by Domestic Users and export shipments made by Exporters between 12:01 a.m. Wednesday through Midnight of the following Tuesday (hereinafter called "rate week").
- (d) All qualities of eligible ELS cotton will earn the same per pound payment rate.

#### **Section A-5. Issuance of Payments**

After receipt of the application for payment, together with required supporting documents, CCC will issue payments in an amount determined by multiplying the per pound payment rate determined in accordance with Section A-4 of this ELS Agreement times the net pounds determined in accordance with Section B-4 or C-4, as applicable, of this ELS Agreement. If a cash payment is not made within thirty days of receipt of valid documentation, CCC will pay interest at the prompt payment interest rate.

#### **Section A-6. Excessive Payment**

If the Domestic User or Exporter receives a payment in excess of the entitled payment in accordance with this ELS Agreement, the Domestic User or Exporter shall refund to CCC an amount equal to the excess payment, plus interest thereon, as determined by CCC.

#### **Section A-7. Record Retention and Access**

From the effective date of this ELS Agreement until the earlier of three years after the termination date of this ELS Agreement or July 31, 2006, the Domestic User or Exporter shall keep records and furnish such information and reports relating to this ELS Agreement as may be requested by CCC. Such records shall be available at all reasonable times for an audit or inspection by authorized representatives of CCC, United States Department of Agriculture, or the Comptroller General of the United States. Failure to keep, or make available, such records may result in termination of this ELS Agreement by CCC and refund to CCC of all payments received, plus interest thereon, as determined by CCC.

#### **Section A-8. Submission of Documents**

- (a) **Submit ALL Extra Long Staple COTTON DOMESTIC USER/EXPORTER DOCUMENTS**

**to the Financial Review Branch, Contract Reconciliation Division, KCCO (Exhibit 1).**

- (b) All documents submitted to CCC for this program must be legible, accurate, and contain the ELS Agreement number assigned by CCC.
- (c) Applications for payment will be processed according to the date and time stamped on the application by the Kansas City Commodity Office (KCCO) upon receipt. An application/report will **not** be considered received by CCC until such time as it has been submitted without error, and completed in full.

**Section A-9. Regulations and Other Authorities**

Provisions of this ELS Agreement are subject to applicable laws and authorities including but not limited to:

- 7 CFR Part 780, Appeal Regulations;
- 7 CFR Part 1427, Cotton; and
- 7 CFR Part 1401, Commodity Certificates and In-Kind Payments, and other Forms of Payment.

**Section A-10. Term of ELS Agreement**

This ELS Agreement will continue in force until it is terminated in writing by CCC or at the mutual agreement of the parties. CCC may also terminate this ELS Agreement without prior written notice when required to do so by programmatic requirements, expiration of authorizing legislation, or exhaustion of funds.

**Section A-11. Program Violations**

If the Domestic User or Exporter is suspected by CCC to have knowingly: (1) adopted any scheme or device which violates this ELS Agreement; (2) made any fraudulent representation; or (3) misrepresented any fact affecting a determination under this ELS Agreement, CCC will notify the appropriate investigating agencies of the United States and may terminate the ELS Agreement and debar the offending company from further government participation as deemed necessary to protect the interests of the government.

No Member or Delegate of Congress or Resident Commissioner shall be admitted to any share or part of this ELS Agreement or to any benefit to arise therefrom, except that this provision shall not be construed to extend to their interest in any incorporated company, if this ELS Agreement is for the general benefit of such company, or shall it be construed to extend to any benefit which may accrue to such official in their capacity as a producer.

**Section A-12. Appeals**

- (a) Domestic Users or Exporters who dispute a KCCO decision may request a review of the decision by the Deputy Administrator, Commodity Operations (DACO). Such request must be in writing and contain the relevant facts upon which the review will be heard and must be received by DACO within 15 days from the date of receipt of the disputed decision. Requests must be directed to:

Director, Warehouse and Inventory Division  
Farm Service Agency  
U.S. Department of Agriculture  
P.O. Box 2415 STOP 0553  
Washington, DC 20250-0553  
Facsimile 202 690-0014  
E-Mail **Barry\_Klein@wdc.fsa.usda.gov**

- (b) Domestic Users or Exporters who dispute a review decision by DACO may appeal such decision to the National Appeals Division. Such an appeal must be made within 30 days of receipt of a DACO decision. Such appeal will be conducted in accordance with 7 CFR Part 780 and must be directed to the National Appeals Division.

## **SECTION B. DOMESTIC USER**

### **Section B-1. Eligible Domestic User**

A Domestic User is a person regularly engaged in purchasing eligible ELS cotton for the purpose of manufacturing such cotton into cotton products in the United States.

### **Section B-2. ELS Cotton Eligible for Payment**

ELS cotton eligible for payment is cotton consumed by the Domestic User in the United States on or after the effective date of this ELS Agreement during the rate week in which a positive payment rate, as determined in accordance with Section A-4 of this ELS Agreement, is in effect.

### **Section B-3. Date of Consumption**

- (a) The payment rate is the rate in effect on the date of consumption. The date of consumption is the date the bagging and ties are removed from the bale.
- (b) ELS cotton will be considered consumed by the Domestic User on the date the bagging and ties are removed from the bale in the normal opening area, immediately prior to use, in a building or collection of buildings where the cotton in the bale will be used in the continuous process of manufacturing the cotton into cotton products.
- (c) Some Domestic User's official company records may show bales in the consumption process either a few hours before or after the physical removing of bagging and ties. This is permissible provided the same method of reporting is consistently used each week.
- (d) When bales are designated to be dyed, they shall be considered consumed when bagging and ties are removed immediately prior to the cotton entering the dying process.

### **Section B-4. Determining the Quantity of Eligible ELS Cotton**

The quantity of eligible ELS cotton with respect to which a payment is made available in accordance with this ELS Agreement shall be determined based upon the net weight of each bale of eligible cotton (gross weight minus the weight of the bagging and ties). The net bale weight shall be determined based upon the net pounds as shown on the purchase invoice on which settlement for payment was made, supported by weight sheets including a detailed list of bale numbers.

### **Section B-5. Weekly Consumption /Application for Payment Report**

- (a) The Domestic User must, after the effective date of this ELS Agreement, report to CCC the activity for the preceding rate week on a Weekly Consumption/Application for Payment Report hereafter referred to as the (Application/Report)(Exhibit 2). The Application/Report must be submitted no later than close of business (COB) Friday, following each rate week even when no payment is being earned. If a national holiday falls within the reporting period, a one business day extension will be granted. If the Domestic User's facility is temporarily closed for any reasons, a negative Application/Report must be submitted the week prior to or after the plant closing occurs. Failure to

submit Application/Reports will result in delays in payments until all delinquent Application/Reports are received. The Application/Report, and any other required documents received from a Domestic User that contain errors or omissions will not be processed for payment.

(b) The Application/Report must contain the following information:

- (1) **Date** - Show the date the Application/Report is submitted to CCC;
- (2) **ELS Agreement Number** - Show your ELS Agreement number assigned by CCC, e.g., X-xxxx;
- (3) **Company Name** - Show the name from your ELS Agreement;
- (4) **Contact** - Show individual name and phone number;
- (5) **Rate Week Consumption Dates** - Show the applicable dates, e.g., April 5, 2000, to April 11, 2000;
- (6) **Payment Rate** - When there is a payment rate in effect, show the announced payment rate for specified dates. A zero payment rate must be shown as "0".
- (7) **Type of Cotton** - Show the type of cotton as lint or loose with the number of bales, net pounds on which settlement for payment was based for each type of cotton consumed, and when there is a payment rate in effect, computed payment amount along with a grand total amount due; and
- (8) **Certification Statement and Signature** - Include the following signed certification statement on the Application/Report:

"I hereby certify that this document and all supporting documents (when required) are being submitted in accordance with the terms of the Extra Long Staple Cotton Domestic User/Exporter ELS Agreement and that the cotton covered by this Application/Report was domestically produced, has not previously earned a payment under the Special Competitive Provisions for Extra Long Staple Cotton Program, and is eligible for a payment, if applicable."

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Authorized Representative

**Section B-6. Penalties for Late Submission of Applications for Payment**

Applications for payment submitted after COB Monday following the rate week will be considered late by CCC and receive payment at the lesser of the payment rate for the rate week, or the submission date. If not submitted within 30 days after COB Friday following the rate week, the payment rate will be ZERO. If late submission of Application/Report for payment is beyond the control of the Domestic User, relief may be requested by contacting, KCCO (Exhibit 1).

**Section B-7. Maintenance of Records**

In addition to the records requirements in Section A-7, the Domestic User must maintain the following records for all cotton consumed:

- (a) A detailed list of bale numbers and the "landed" net weights identified by the type of cotton;
- (b) Documentation supporting the acquisition of cotton, including a register of purchase contracts, amendments, and cancellations, and a register of contracts for resold cotton. Records must show the number of bales received each week by type of cotton supported by purchase contracts and weight sheets documenting the "landed" net weight when received at the mill. For resold cotton, supporting records must show the number of bales delivered from the mill each week by type of cotton;
- (c) Documentation that provides the capability to trace the "consumed bale weight" back to the source purchase contract documents showing the "landed" net weight; and
- (d) A detailed list of bales consumed weekly showing the bale numbers and net weights on which settlement for payment was based for each type of cotton (baled lint or loose).
- (e) Documentation supporting the acquisition, consumption and disposition of ineligible cotton.



## **SECTION C - EXPORTERS**

### **Section C-1. Eligible Exporter**

An eligible exporter is a person, including producers or cooperative marketing associations, regularly engaged in exporting cotton from the United States.

### **Section C-2. ELS Cotton Eligible for Payment**

ELS cotton eligible for payment is cotton which is shipped by an eligible Exporter on or after the effective date of this ELS Agreement during the rate week in which a positive payment rate, as determined in accordance with Section A-4 of this ELS Agreement, is in effect.

### **Section C-3. Date of Export**

- (a) Eligible ELS cotton will be considered exported based on the on-board-vessel-date as shown on the bill of lading.
- (b) For intermodal shipments, the date that the containers are placed on board the vessel, will be used as the date of export.
- (c) For truck and rail shipments to Canada or Mexico, the date the shipment crosses the international border will be used as the date of export.

### **Section C-4. Determining the Quantity of Eligible ELS Cotton**

- (a) The quantity of eligible ELS cotton with respect to which a payment is made available in accordance with this ELS Agreement shall be determined based upon the net weight of each bale of eligible cotton (gross weight minus the weight of the bagging and ties).
- (b) The net bale weight shall be determined based upon the net pounds as shown on the supporting weight/tag lists showing the warehouse receipt weights of the shipping warehouse or gin weights if the cotton was not placed in a warehouse, or the reweights certified by a licensed weigher. Franchised or inflated weights will not be accepted for payments.

### **Section C-5. Proof of Export**

- (a) The exporter must furnish CCC the following:
  - (1) Form CCC-1045-2A, Special Competitive Provisions for Extra Long Staple Cotton Program Exporter Application for Payment (Exhibit 3), shall be prepared for all positive pay shipments based on the date of export. Blank copies of the CCC-1045-2A, may be reproduced by the Exporter as needed. Computer printouts in the same format as the CCC-1045-2A, are acceptable. Form CCC-1045-2A, and other required documents received from an Exporter that contain errors or omissions will not be processed for payment.

- (2) A copy of the bill of lading must include: the on-board vessel date in accordance with Section C-3, bill of lading number, bales and pounds exported for each type of eligible cotton, vessel name, port of export, destination, and exporter and consignee/notify party. The bill of lading must be signed.
  - (3) For eligible cotton exported to Canada or Mexico by truck or rail, a copy of the bill of lading must be submitted. The bill of lading must include the date of shipment, car or truck number, bales and pounds exported for each type of eligible cotton, origin shipping location and destination. Documentation evidencing the date the shipment crossed the border issued by an independent third party acceptable to CCC will be required on these shipments;
  - (4) Weight sheets which show the following information:
    - (i) a detailed list of bale numbers;
    - (ii) the weights of individual bales as shipping warehouse receipt weights, gin weights, or certified reweight sheets if the bales are reweighed at the U.S. port;
    - (iii) certified reweighs if bales are reweighed at the shipping warehouse and are immediately containerized for intermodal shipment or the bales are shipped to the port for containerization;
    - (iv) grand total of bales, net pounds and gross pounds by type of eligible cotton; and
  - (5) A copy of the export sale invoice showing the importer name, number of bales, and the net pounds invoiced by type of eligible cotton. When an Exporter has multiple Bills of Lading on one invoice, each Bill of Lading number and net weight shipped must be identified. Each set of documents (Bill of Lading, tag list, border crossing document) must have a copy of the invoice attached with the Bill of Lading number highlighted.
  - (6) All documents submitted to CCC must show the assigned ELS Agreement number and application number.
- (b) For any week in which the payment rate derived in accordance with Section A-4 is zero, **no reports** are required to be submitted to CCC by the Exporter.
- (c) All shipment documents must be maintained by the Exporter and be accessible for review by CCC, including weight sheets for shipments during periods when zero payment rates were in effect.

### **Section C-6. Payment**

- (a) The payment rate is the rate in effect on the date of export in accordance with Section C-3.
- (b) Within 60 calendar days after the date of export, the application for payment CCC-1045-2A and all supporting documents required in Section C-5 must be submitted to CCC. The payment will be calculated by multiplying the payment rate announced for the rate week in which the cotton was shipped times the net weight shown on the weight sheets.
- (c) Failure to submit the required documents within 60 calendar days of the date of export will cause forfeiture of the payment. If late submission of application for payment is beyond the control of the Exporter, relief may be requested by contacting KCCO (Exhibit 1).

- (d) CCC will issue payments only to the ELS Agreement holder. Names on supporting documents other than the name of the ELS Agreement holder must be documented as follows:

**Company/Trade Name:** The Exporter name on the bill of lading may be different from the ELS Agreement holder name if the Exporter operates under multiple trade names. CCC must be advised of the multiple trade names that operate under the same ELS Agreement number when the ELS Agreement is executed; and

**Other Name:** When a bill of lading is submitted as a supporting document for payment and the shipper of record is different from the ELS Agreement holder making the application for payment, an original letter (Exhibit 4) from the shipper of record must be submitted showing:

- |  |                                  |
|--|----------------------------------|
| 1. Vessel name or container number   | 2. Bill of lading number         |
| 3. Bill of lading date   | 4. Number of bales/weight        |
| 5. A certification that the shipper of record<br>will not claim payment for the cotton shipped | 6. Authorized original signature |

The ELS Agreement holder agrees to furnish documentation, as deemed necessary by CCC regarding these shipments.

#### **Section C-7. Maintenance of Records**

In addition to the records requirements in Section A-7, the exporter must maintain the following records for all export shipments including during periods when zero payment rates were in effect:

- (a) Sales contracts;
- (b) Export reports showing importing country and importer name;
- (c) Bill of lading showing pounds and bales exported by type of cotton and date of export (on-board vessel date);
- (d) Record of bale numbers and bale net weight by type of cotton and origin of cotton;
- (e) Application number for payment (positive rate shipments) showing payment rate; and
- (f) Invoices to importers.

**DOMESTIC USER/EXPORTER:**

The Domestic User/Exporter has submitted this ELS Agreement, signed and dated:

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AUTHORIZED SIGNATURE

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TITLE

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DATED**COMMODITY CREDIT CORPORATION:**

This ELS Agreement is executed by CCC and shall be effective \_\_\_\_\_  
Month Day Year

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On Behalf of CCC

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Date

NOTE: The following statements are made in accordance with the Privacy Act (5 USC 552a), and the Paperwork Reduction Act. The Federal Agriculture Improvement and Reform Act of 1996, and regulations at 7 CFR 1427 authorize this ELS Agreement and other collections of information required for participation in the Special Competitive Provisions for Extra Long Staple Cotton Program. In addition to the already published routine uses the information will be used to determine eligibility to receive payment and to determine payment amounts. Providing this information is voluntary; however, without it, participation in the program will be denied. This information may be furnished to other USDA agencies, IRS, Department of Justice, or other State and Federal Law enforcement agencies, and in response to orders of a court magistrate or administrative tribunal.

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0560-0136. The time required to complete this information collection is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. **RETURN THIS COMPLETED FORM TO THE FINANCIAL REVIEW BRANCH, KANSAS CITY COMMODITY OFFICE, P.O. BOX 419205, KANSAS CITY, MISSOURI 64141-6205.**

This program will be conducted on a nondiscriminatory basis without regard to race, color, religion, national origin, age, sex, marital status, or disability.